

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE PCT NATIONAL STAGE APPLICATION OF
McCLELLAN, ET AL.

APPLICATION NO: 10/576,376

FILED: MARCH 7, 2007

I.A. FILING DATE: NOVEMBER 22, 2004

Art Unit: 1615

Examiner: LEVY, NEIL S

Conf. No. 9079

FOR: **METHOD OF CONTROLLING FUNGI AND MITES IN TEXTILE
SUBSTRATES**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

This election is in response to the Restriction Requirement dated March 1, 2010. The Examiner set a shortened statutory period for reply of 1 month, making the present response due by April 1, 2010. Applicants submit herewith a 1-month extension of time, making the present response due by May 1, 2010. As May 1, 2010 is a Saturday, this response is due by May 3, 2010.

The Examiner has taken the position that the application claims more than one independent and distinct invention and has required Applicants to elect an invention to be examined. Specifically, the Examiner has identified the following:

Group I: Claims 1-10, drawn to combining with textile materials;

Group II: Claims 11-18, drawn to surface contact of substrates; and

Group III: Claims 19-24, drawn to fungus removal.

Pursuant to 35 U.S.C. § 121 and 372, the Examiner has required that Applicants elect among the inventions. Accordingly, Applicants elect, with traverse, Group II, claims 11-18. Reconsideration of the restriction requirement is respectfully requested.

Groups I - III all relate to the combinations of fungicides and textiles. It is clear that Groups I to III, as set forth by the Examiner, are related to a single general inventive concept under PCT Rule 13.1 and should be examined together. Thus, Applicants view as appropriate the inclusion in a single application of claims reading on a combination of a fungicide with a textile material. What is represented is interrelated subject matter. This interrelationship rather than the classification in separate classes should be the overriding factor in determining the propriety of the restriction requirement. Additionally, the current guidelines on restriction practice recommend the examination of different sets of claims when such examination would not be unduly burdensome or prolonged. It is contended that this guideline would apply to the instant set of claims.

In order to comply with the outstanding election requirement, Applicants elect the following as a single disclosed species:

- Textile species - polyamide
- Substrate species - carpet
- Fungicide species - azoxystrobin

- Acaracide species - permethrin

Claims 11-18 are readable on the present election.

Applicants reserve the right to file one or more divisional applications directed to the subject matter of claims that are ultimately cancelled as a result of the Examiner's requirement.

Applicants aver that they have made a complete response to the restriction requirement of the Examiner and that the instant application and claims are now in better condition for examination on their merits and for allowance.

As this response is submitted within two months from the mailing date of the Office Action, a one (1) month extension of time is included herewith.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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Date: May 3, 2010

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